Nos. 76-777, 76-933, 76-934, 76-935

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

PEGGY J. CONNOR, et al., *Appellants*
and
UNITED STATES OF AMERICA, *Intervenor*
v.
CLIFF FINCH, Governor of Mississippi, et al.

CLIFF FINCH, Governor of Mississippi, et al.,
Appellants
v.
PEGGY J. CONNOR, et al., and the
UNITED STATES OF AMERICA

UNITED STATES OF AMERICA, *Appellant*
v.
CLIFF FINCH, Governor of Mississippi, et al.

PEGGY J. CONNOR, et al., *Appellants*
v.
CLIFF FINCH, Governor of Mississippi, et al.

On Appeal from the United States District Court for the Southern District of Mississippi (Three-Judge Court)

BRIEF FOR THE STATE PARTIES

WILLIAM A. ALLAIN
Special Counsel
Post Office Box 220
Jackson, Mississippi 39205

JERRIS LEONARD
THOMAS A. KAROL
Special Counsel
1747 Pennsylvanina Ave., N.W.
Washington, D.C. 20006

A. F. SUMMER
Attorney General, State of Mississippi

GILES W. BRYANT
Special Assistant Attorney General
Gartin Justice Building
Jackson, Mississippi 39201

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

INDEX

CITATIONS

Cases:

Constitution, Statutes:

Miscellaneous:

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-777

PEGGY J. CONNOR, et al., *Appellants*

v.

CLIFF FINCH, Governor of Mississippi, et al.

No. 76-933

CLIFF FINCH, Governor of Mississippi, et al., *Appellants*

v.

PEGGY J. CONNOR, et al., and the UNITED STATES OF AMERICA

No. 76-934

UNITED STATES OF AMERICA, *Appellant*

v.

CLIFF FINCH, Governor of Mississippi, et al.

No. 76-935

PEGGY J. CONNOR, et al., *Appellant*

v.

CLIFF FINCH, Governor of Mississippi, et al.

On Appeal from the United States District Court for the Southern District of Mississippi (Three-Judge Court)

BRIEF FOR THE STATE PARTIES

OPINIONS BELOW

The district court's opinions of August 24, 1976 (App. Vol. III, 94), and September 8, 1976 (App. Vol. III, 117), are reported at 419 F. Supp. 1072 and 1089, respectively. The district court's opinion of November 12, 1976 (App. Vol. III, 220), is reported at 422 F. Supp. 1014.

JURISDICTION

The judgment of the district court was entered on November 18, 1976 (App. Vol. III, 232), and was amended by order entered on December 21, 1976 (App. Vol. III, 279). On December 8, 1976, this Court noted probable jurisdiction regarding plaintiffs' appeal from the district court judgment denying injunctive relief (App. Vol. III, 259). In noting probable jurisdiction this Court ordered that any and all other appeals from the judgment be taken by filing notices of appeal and be perfected by filing statements as to jurisdiction by January 5, 1977. The jurisdictional statements of plaintiffs, defendants and intervenor were filed on January 5, 1977, and probable jurisdiction was noted to all three jurisdictional statements on January 17, 1977. The jurisdiction of this Court rests on 28 U.S.C. § 1253.

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by refusing to utilize multi-member districts in fashioning its plan, and thus having to abandon the State policy of preserving the integrity of the county boundaries.

2. Whether the district court, having found that the 1975 elections were held pursuant to a constitutionally proper plan, erred in ordering special elections after formulating a new reapportionment plan.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment provides in part:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Fifteenth Amendment provides:

> "Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

STATEMENT

A. History of the Litigation

1. Reapportionment Proceedings Prior to 1971

Judicial review of the apportionment of the Mississippi Legislative districts began in 1965 [1] when plaintiffs [2] sought the reapportionment of the Legislature

---

[1] The plans under which the 1967 elections were held were not appealed, thus the litigation began anew in 1971.

[2] This brief will refer to the parties as they were in the district court. Accordingly, Peggy J. Connor, et al. are plaintiffs; United

based on the principle of one person-one vote. *Connor* v. *Johnson,* 256 F. Supp. 962 (S.D. Miss. 1966). Plaintiffs challenged the apportionment of seats in the Senate and the House of Representatives.[3] Under the Mississippi Constitution, as it then existed, each county had one representative with the remaining forty representatives divided among the more populous counties on a population basis. Senatorial districts were divided so that the more populous counties were each allotted one senator and the less populous counties combined for the purpose of electing one senator. *Id.* at 965. Since there were large population variances among the legislative districts, the three-judge district court found the apportionment provisions of the Mississippi Constitution and statutes to be unconstitutional as violating the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *Id.* at 967.

After the legislative apportionment was held unconstitutional, a special session of the Legislature was convened to reapportion the legislative districts. A new reapportionment plan was passed by the Legislature and approved by the Governor on December 1, 1966. Under this plan there remained a number of large variations among the legislative districts.[4] While the validity of this plan was being considered, *Swann* v. *Adams,* 385 U.S. 440 (1967), was decided by this Court. The district court held that based on *Swann* the reapportionment plan was fatally defective unless the variations could be explained on the basis of rational State policy. *Connor* v. *Johnson,* 265 F. Supp. 492, 493-494 (S.D. Miss. 1967). "Since the Mississippi Legislature keeps no stenographic report of its debates and requires no formal committee reports other than recommendations as to passage or rejection, it was impossible for the Attorney General to file such an explanation." *Id.* at 494. Therefore, the district court held the reapportionment plan to be unconstitutional and proceeded to reapportion the legislative districts based on the principle of one person-one vote. The court noted that it had not:

> . . . consulted or considered any population figures in any county or district as to the race of the inhabitants thereof, but it [had] been the deliberate purpose [of the court] . . . that this reapportionment shall . . . be wholly devoid of any racial consideration whatsoever. *Id.* at 498-499.

The district court expressly retained jurisdiction to review any reapportionment plan that the State Legislature might enact based upon the 1960 or 1970 United States census. *Connor* v. *Johnson, supra,* 265 F. Supp. at 499. No appeal was taken from this decision and the 1967 legislative elections were held pursuant to the district court plan.

2. Reapportionment History and Proceedings Since 1971

After the completion of the 1970 census, the State Legislature enacted a new reapportionment plan to be used in the 1971 elections. The plan was submitted to the district court pursuant to its retained jurisdiction. Although the district court found that the Legislature

---

States of America is intervenor; and Cliff Finch, Governor of Mississippi, et al. are defendants.

[3] Mississippi is divided into 82 counties. There are 122 representatives and 52 senators.

[4] Variations in excess of 20 percent were common with a number of variations exceeding 30 percent. *Connor* v. *Johnson,* 265 F. Supp. 492, 493 (S.D. Miss. 1967).

had "not acted capriciously or arbitrarily or oppressively in its efforts to reapportion itself," *Connor* v. *Johnson,* 330 F.Supp. 506, 519 (S.D. Miss. 1971), the district court nevertheless invalidated the plan for containing impermissible variances.[5] *Id.* at 508.

Because of the impending legislative elections, the district court proceeded to devise a reapportionment plan for the 1971 elections. The district court held its action was "for the purpose of complying with the one man-one vote requirements of the United States Constitution involving no racial discrimination in the exercise of the franchise under the Fifteenth Amendment." *Connor* v. *Johnson, supra,* 330 F.Supp. at 519. Recognizing the integrity of county boundaries, the district court created multi-member districts, rather than fractionalize county lines. *Id.* at 518. The three largest counties, Hinds, Harrison and Jackson, respectively elected twelve, seven and six [6] representatives at-large. Addressing itself to these three counties, the district court stated:

> When, however, a county, within its own borders, elects four or more representatives it would be ideal if it could be divided into districts, for the election of one member to the district. *Id.* at 519.

Nonetheless, the district court declined to divide Hinds, Harrison and Jackson Counties into districts finding:

---

[5] The district court cited variances as large as 25 percent. It noted that no rational basis was offered for the variances. *Connor* v. *Johnson, supra,* 330 F.Supp. at 508.

[6] Jackson County was entitled to five representatives by itself. George County was combined with Jackson County to elect six representatives at-large.

> [I]t is a matter of sheer impossibility to obtain dependable data, population figures, boundary locations, etc. so as [to] fairly and correctly divide these counties into districts for the election of single members of the Senate or the House in time for the elections of 1971. *Id.* at 519.

The district court stated that it intended to appoint a special master to determine the feasibility of dividing Hinds, Harrison and Jackson Counties into districts of substantially equal numbers in population for the 1975 and 1979 elections. The district court therefore retained jurisdiction over those three counties. The reapportionment plan *"as to all other Counties* [*was*] *final* and subject to no further review" by the district court. *Connor* v. *Johnson, supra,* 330 F.Supp. at 519 (emphasis in original).

Plaintiffs motioned this Court to stay the district court's order and extend the deadline for filing notices of candidacy until single-member districts were created in Hinds County. In their motion, plaintiffs stated to this Court that they were able to formulate four single-member district plans for Hinds County in the space of three days. *Connor* v. *Johnson,* 402 U.S. 690, 692 (1971). This Court held "that when district courts are forced to fashion apportionment plans, single-member districts are preferable to large multi-member districts as a general matter." *Id.* at 692. In view of "the dispatch with which the [plaintiffs] devised suggested plans" and the apparent availability of census information, this Court granted the motion for stay until June 14. The district court was instructed "absent insurmountable difficulties, to devise and put into effect a single-member district plan for Hinds County" by June 14, 1971. *Id.*

Within forty-eight hours of this Court's order, the district court held a hearing for the purpose of complying with the order. *Connor* v. *Johnson,* 330 F.Supp. 521, 522 (S.D. Miss. 1971). At the hearing, "plaintiffs readily conceded that the plan originally submitted to [the district court] by plaintiffs, and later filed with the Supreme Court, was based on an erroneous precinct map." *Id.* at 522.

The district court on June 8, 1971, appointed William D. Neal as Special Master to propose by June 14 "a valid plan, if such be possible, for the division of Hinds County as directed by the Supreme Court." *Connor* v. *Johnson, supra,* 330 F.Supp. at 524. The Special Master in examining available data found "that the census figures available for the accomplishment of the task were limited to figures tabulated by 'census enumeration districts' and that these districts were rarely coterminous with individual precinct lines."[7] *Id.* at 527. Regarding plaintiffs' proposals, the Special Master concluded that they were "unusable for the election of Representatives and Senators. The proposals were found to have so many basic defects" that the Special Master recommended "that the plans be rejected in their entirety." *Id.* at 526. The Special Master recommended that the 1971 election of senators and representatives from Hinds County be conducted in the manner directed by the district court in *Connor* v. *Johnson, supra,* 330 F.Supp. 506. *Id.* at 528.

After making a number of findings of fact, the district court concluded that it was "confronted with insurmountable difficulties against the division of Hinds

[7] The report of the Special Master is Exhibit "B" of the district court's opinion, *Connor* v. *Johnson,* 330 F.Supp. 521 (S.D. Miss. 1971) and may be found at pages 524-532.

County" into single-member districts for the 1971 elections. *Connor* v. *Johnson, supra,* 330 F.Supp. at 523. Plaintiffs sought a further stay which this Court denied on June 21, 1971. *Connor* v. *Johnson,* 403 U.S. 928 (1971).

After the 1971 elections were held, plaintiffs appealed to this Court challenging the constitutionality of the district court's plan, contending that impermissibly large variances required the plan to be voided, a new plan instituted, and new elections held. *Connor* v. *Williams,* 404 U.S. 549, 550 (1972). In alleging that the variances invalidated the district court's plan, plaintiffs relied on *Kirkpatrick* v. *Preisler,* 394 U.S. 526 (1969) and *Wells* v. *Rockefeller,* 394 U.S. 542 (1969). This Court held that those decisions did not "squarely control" the appeal since they concerned congressional apportionment, rather than state legislative apportionment. *Connor* v. *Williams, supra,* 404 U.S. at 550.

This Court declined to disturb the validity of the 1971 elections and withheld a determination as to the prospective validity of the district court plan for the 1975 elections. It noted that Hinds, Harrison and Jackson Counties' multi-member districts were temporary and that the district court had retained jurisdiction over those three counties to determine whether they may feasibly be divided into districts of substantially equal numbers in population for the elections of 1975 and 1979. Pending completion of those proceedings, this Court deemed it inappropriate to give further consideration to the case. *Connor* v. *Williams, supra,* 404 U.S. at 551.[8] This Court noted that in the meanwhile

[8] The district court's judgment was vacated so that when a final judgment was subsequently entered, plaintiffs' right to appeal would be preserved. *Connor* v. *Williams, supra,* 404 U.S. at 552.

the State Legislature might adopt a reapportionment plan which would make it unnecessary for the district court to develop a plan. *Id.* at 552, fn. 4.

Responding to this Court's decision in *Connor* v. *Williams, supra,* 404 U.S. 549, the Mississippi Legislature established a Joint Legislative Reapportionment Study Committee which was authorized to formulate guidelines and make proposals for reapportionment. The committee met during the summer and fall of 1972, and heard testimony from a variety of witnesses including the Special Master, William D. Neal, and representatives of the plaintiffs and defendants. The committee reported to the Legislature in January, 1973 (Supp. App. 12a-13a).

On January 3, 1973, plaintiffs motioned the district court to accept the resignation of the Special Master, William D. Neal, and appoint a new Special Master "to proceed with the construction of single-member districts for Hinds, Harrison and Jackson Counties" (Jurisd. State. No. 76-933, App. 83a). The district court on January 4, 1973, issued an Order for Deferment referring to the State Legislature the matters contained in plaintiffs' motion relating to Hinds, Harrison and Jackson Counties. The Legislature was given until February 10, 1973, to pass upon the legislative questions. Plaintiffs were directed to contact the proper officials of the Mississippi Legislature to make known their contentions, data and information (Jurisd. State. No. 76-933, App. 85a). Plaintiffs thereafter presented their plans to officials of the Mississippi Legislature.

The Legislature adopted new reapportionment plans and on February 9, 1973, the Governor approved House reapportionment plan, H.B. 446, and Senate reapportionment plan, S.B. 1701, Miss. Legis., 1973 Reg. Sess. These plans established within Hinds, Harrison and Jackson Counties single-member districts, small multi-member districts, and small floterial districts. The plans retained for the remaining counties in the State the legislative districts established by the district court in its 1971 plan. These reapportionment plans were submitted for approval to the district court on February 9, 1973 (App. Vol. I, 15). Plaintiffs filed objections to the legislative plans, H.B. 446 and S.B. 1701, on March 14, 1973 (App. Vol. I, 15).

Two weeks after the Governor had approved H.B. 446 and S.B. 1701, this Court decided *Mahan* v. *Howell,* 410 U.S. 315 (1973). That case held, in part, that constructing legislative districts to maintain the integrity of political boundaries was a rational basis for permitting certain population variances. The Mississippi Legislature's reaction to that decision was a belief that H.B. 446 and S.B. 1701 went further than was required (Supp. App. 14a). New reapportionment legislation, H.B. 1389 and S.B. 2452, Miss. Legis., 1973 Reg. Sess., was enacted and approved by the Governor on April 6, 1973. These enactments, which readopted for Hinds, Harrison and Jackson Counties the plan initially formulated by the district court in 1971, were submitted to the district court on April 12, 1973 (App. Vol. I, 16). Plaintiffs filed objections to H.B. 1389 and S.B. 2452 on April 19, 1973 (App. Vol. I, 17).

On April 17, 1973, plaintiffs filed in the district court a motion for continuance so that they could prepare and submit an alternative single-member district plan for the entire State, not just Hinds, Harrison and Jackson Counties (App. Vol. I, 17). On April 26, 1974, plaintiffs motioned for leave to file a supplemental com-

plaint challenging the entire State reapportionment plan (App. Vol. I, 17). Plaintiffs submitted with the motion an alternative reapportionment plan. The district court entered an order on May 10, 1974, denying plaintiffs' motion for leave to file a supplemental complaint (App. Vol. I, 17).

The district court held a hearing on February 7, 1975, to consider the constitutionality of the 1973 reapportionment legislation, H.B. 1389 and S.B. 2452. After the February 7 hearing, it came to the district court's attention that the Legislature had initiated another effort to reapportion the legislative districts. "Heeding the teachings of *Meier*,[9] [the district court] delayed a decision on the 1973 Acts to see if they were to be replaced by a 1975 enactment." *Connor* v. *Waller*, 396 F.Supp. 1308, 1311 (S.D. Miss. 1975).

The Legislature did enact reapportionment bills, H.B. 1290 and S.B. 2976, Miss. Legis., 1975 Reg. Sess., which were approved by the Governor on April 7 and 8, 1975. Section 3 of both bills directed the Mississippi Attorney General to submit the bills to the district court pursuant to its retained jurisdiction over the subject matter for a determination of the constitutionality of the bills.

The district court dismissed on April 10, 1975, all prior proceedings without prejudice since it believed the 1975 legislation mooted the prior proceedings.[10]

[9] The reference is to *Chapman* v. *Meier*, 420 U.S. 1 (1975), decided by this Court two weeks before the February 7 hearing. That decision reiterated the principle that "reapportionment is primarily the duty and responsibility of the State through its Legislature or other body, rather than of a federal court". *Id.* at 27.

[10] In a subsequent order, the district court vacated this dismissal.

Connor v. *Waller, supra*, 396 F.Supp. at 1311. Plaintiffs were directed to file amended complaints addressed to the 1975 reapportionment Act. Plaintiffs filed an amended complaint and a hearing was held on May 7, 1975. The district court issued its opinion on May 19, 1975, approving the reapportionment plan.[11] *Id.*

In approving the reapportionment plan the district court made the following findings of fact: the preservation of the integrity of county lines has been a policy of Mississippi since it became a state in 1817; the State Legislature acted in good faith in reapportioning and attempted to comply with the constitutional requirements; the plan complies with the constitutional requirements; the plan complies with as nearly as practicable the standards of the one person-one vote rule as enunciated by the Supreme Court; any variances from the population norm were reasonable, unavoidable, and constitutionally justifiable; the reapportionment plan will not deprive any person of fair and effective representation; and the plan does not unconstitutionally minimize or cancel out black voting strength for the election of the Mississippi Legislature. *Connor* v. *Waller, supra*, 396 F.Supp. at 1321, 1332.

On June 5, 1975, this Court reversed the district court, holding that the legislative enactments were required to be submitted pursuant to § 5 of the Voting Rights Act of 1965, 79 Stat. 439, *as amended*, 42 U.S.C. § 1973c. *Connor* v. *Waller*, 421 U.S. 656 (1975). Since the Acts would not be effective as laws until cleared pursuant to § 5, the district court was held to have erred

[11] Jurisdiction was retained over Harrison County's apportionment plan for the election of representatives pending disposition of a related proceeding. *Connor* v. *Waller, supra*, 396 F.Supp. at 1317-1318.

in deciding the constitutional challenge to the Acts based upon claims of racial discrimination.

The reversal was without prejudice to the district court's authority to require, if appropriate, the holding of the 1975 legislative elections pursuant to a court-ordered plan that complied with this Court's decisions in *Chapman* v. *Meier,* 420 U.S. 1 (1975); *Mahan* v. *Howell,* 410 U.S. 315 (1973); and *Connor* v. *Williams,* 404 U.S. 549 (1972). *Connor* v. *Waller, supra,* 421 U.S. at 656.

On June 9, 1975,[12] Mississippi submitted to the United States Attorney General the 1975 legislative reapportionment Acts in compliance with § 5 of the Voting Rights Act. On June 10, 1975, the Attorney General objected to the Acts [13] on the ground that Mississippi had failed to show that the Acts did not have the purpose and would not have the effect of denying or abridging the right to vote on account of race.

On June 11, 1975, the United States motioned to intervene as a party plaintiff, which motion was granted by the district court (App. Vol. I, 22). On June 20, 1975, the district court held a hearing to consider plaintiffs' motion for injunctive relief [14] and defendants' petition for a writ of mandamus.[15] Since the 1975 legislative reapportionment Acts had not become effective as laws, the district court entered an order on June 20, 1975, vacating its previous order of April 10, 1975, which had dismissed all prior proceedings without prejudice (App. Vol. I, 23).

The district court ordered on June 25, 1975, the intervenor to file memoranda setting forth facts of the record demonstrating unconstitutional dilution of black voting strength as asserted by the intervenor. Plaintiffs were permitted, if they desired, to file similar memoranda (App. Vol. II, 179). The district court further stated that it intended, where necessary, to alter any district to remedy any unconstitutional dilution of black voting strength. The district court advised the parties that it proposed to formulate a temporary plan for the 1975 legislative elections only, and that a permanent plan would be formulated at a later date for the 1979 elections. The district court stated that special elections may be ordered after the formulation of a permanent plan "where required by law, equity, or the Constitution of the United States" (App. Vol. II, 180).

By orders dated June 25, July 8 and July 11, 1975, the district court formulated the temporary reapportionment plan under which the 1975 elections were held

---

[12] On that same day, the plaintiffs motioned the district court for injunctive relief (App. Vol. I, 22). In that motion, plaintiffs stated that the 1975 legislative plans would be objected to by the United States Attorney General.

[13] As this Court has recognized, the "judgment that the Attorney General must make [under § 5] is a difficult and complex one." *Georgia* v. *United States,* 411 U.S. 526, 540 (1973). However, in the present case the Attorney General objected to the reapportionment plans one day after they had been submitted.

[14] Plaintiffs sought to enjoin defendants from using the 1971 court-ordered plan as the basis for the legislative districts in the 1975 elections.

[15] Defendants petitioned for writ of mandamus pursuant to 28 U.S.C. § 1361 to direct the United States Attorney General to withdraw his objections to the 1975 legislative reapportionment Acts (Supp. App. 50a). The basis for the petition was the policy of the Attorney General in exercising his § 5 administrative review authority to defer to judicial determination regarding racial discrimination of a state reapportionment plan (Supp. App. 50a). This policy was discussed in *Georgia* v. *United States,* 411 U.S. 526, 534, fn. 6. The district court never ruled on the petition for writ of mandamus.

(App. Vol. II, 178, 183, 207). In its July 11 order, the district court instructed the parties to file within ninety days plans for the permanent reapportionment of the Legislature (App. Vol. II, 237).[16]

Plaintiffs on July 21, 1975 and intervenor on July 24, 1975, filed motions requesting the district court to establish a deadline for the completion of a permanent plan and to establish a definite schedule for special elections (App. Vol. II, 239, 252). On August 1, 1975, the district court entered an order declining to set specific dates, but reiterated its determination to have a permanent plan formulated by February 1, 1976, and to require that any necessary special elections be held in conjunction with the 1976 Presidential elections (App. Vol. II, 254). However, on January 29, 1976. the district court deferred further hearings and decision on a permanent plan pending the resolution of three cases before this Court (App. Vol. III, 79).[17]

---

[16] The parties were instructed to file three types of reapportionment plans: (1) a plan that provides for the minimum practicable deviations from population norms without fracturing county boundaries; (2) a plan which provides for the minimum fracturing of county boundaries, in which no county shall be divided more than once, and no more than two fractured counties shall be placed in the same district; and (3) any plan of a party's own composition which it feels is consistent with the law (App. Vol. II, 237). Pursuant to the order, defendants submitted their plans on October 9, 1975 (App. Vol. I, 27); plaintiffs submitted their plans on October 15, 1975 (App. Vol. I, 28); and intervenor submitted its plans on October 31, 1975 (App. Vol. I, 28).

[17] The three cases are *United Jewish Organization of Williamsburgh, Inc.* v. *Carey*, No. 75-104, certiorari granted, November 11, 1975, argued October 6, 1976; *Beer* v. *United States*, 425 U.S. 130 (1976); and *East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636 (1976).

Plaintiffs motioned this Court for leave to file a petition for a writ of mandamus. This Court granted the motion and continued consideration of the petition until June 17, 1976, to enable the district court to hold an immediate hearing, formulate a permanent reapportionment plan for the 1979 elections, and to order any special elections if necessary. *Connor* v. *Coleman*, 425 U.S. 675 (1976).

The district court held a hearing on June 15, 1976. It issued an opinion on August 24, 1976 (App. Vol. III, 94) discussing the practical aspects of formulating a reapportionment plan, the means of accomplishing its task, and the guidelines it followed in formulating a plan. Among its guidelines were: a county with a large enough population for one senator or representative would have one complete district within the county boundaries; except where a county is divided into districts within its own borders, no county would be split into more than two segments; there would be no minimization or cancellation of black voting strength; population variances would be as near *de minimis* as possible; and the 1970 U.S. Census Bureau figures would be used as the basis for reapportionment (App. Vol. III, 101). The August 24 opinion further decreed legislative districts for the Senate (App. Vol. III, 102-107). The decree directed the parties to stipulate in which senatorial districts they believed special elections would be mandated by the Constitution of the United States (App. Vol. III, 108). Plaintiffs requested special elections in thirteen senatorial districts and intervenor requested special elections in eight senatorial districts (App. Vol. III, 139, 142, 171-172). On September 8, 1976, the district court issued its opinion decreeing legislative districts for the State House of Representa-

tives (App. Vol. III, 117). The parties were directed in that opinion to file a list of districts for the election of representatives in which special elections should be held (App. Vol. III, 136). Plaintiffs requested special elections in forty-one house districts and intervenor requested special elections in twenty-seven house districts (App. Vol. III, 146, 169). Additionally, the plaintiffs objected to the entire senate plan and requested alterations in thirteen house districts (App. Vol. III, 160). The intervenor objected to eleven senate districts and thirty-four house districts (App. Vol. III, 206).

On November 12, 1976, the district court issued an opinion and order modifying its previously ordered plan in response to objections filed by plaintiffs and intervenor (App. Vol. III, 220). Eleven house districts were modified to improve upon contiguity and population. Special elections were ordered in two newly established districts having black population majority which previously had white population majority (i.e. House Districts 79 and 97; App. Vol. III, 227, 228). The district court stayed setting dates for the two special elections until time for an appeal had expired or until this Court had decided an appeal on the merits (App. Vol. III, 230). Final judgment was entered by the district court on November 18, 1976 (App. Vol. III, 232). Plaintiff motioned on November 29, 1976 to alter or amend the judgment (App. Vol. III, 250). In response to plaintiffs' objections, the district court amended its previous judgments by further modifying two senate districts and nine house districts (App. Vol. III, 279).

After the district court's November 18, 1976 judgment, plaintiffs appealed, No. 76-777, directly to this

Court seeking: (a) to vacate the district court's stay of the two special elections; (b) an order directing twenty-two additional special elections in the Mississippi House of Representatives; (c) to enjoin the convening of the Mississippi legislature until the special elections are certified; or in the alternative (d) to expedite a limited appeal on the merits. This Court issued an order on December 8, 1976, treating plaintiffs' application as an expedited appeal from the judgment denying injunctive relief (App. Vol. III, 259). Probable jurisdiction was noted and it was "further ordered that any and all other appeals from the above judgment be taken by filing notices of appeal and perfected pursuant to the Rules of the Court by filing statements as to jurisdiction on or before the close of business Wednesday, January 5, 1977" (App. Vol. III, 259). Defendants, intervenor and plaintiffs each filed jurisdictional statements, No. 76-933, No. 76-934, and No. 76-935, respectively, on January 5, 1977. Probable jurisdiction was noted by this Court on January 17, 1977, as to all three jurisdictional statements and they were consolidated with No. 76-777 (App. Vol. III, 286).

B. Reapportionment Plans Since 1971

Although judicial involvement in the reapportionment of the Mississippi legislative districts began in 1965, the reapportionment dispute before this Court has as its origin the 1971 court-ordered plan.[18] The 1967 court-ordered plan under which the 1967 State legislative elections were held was not challenged by

[18] Thus, plaintiffs' contention that "this case has dragged on through three four-year state legislative terms and is now into a fourth without providing plaintiffs the full and effective relief to which they are entitled" (Jurisd. State. 76-935, 4) is an overstatement.

any of the parties. The permanent reapportionment plan developed by the district court is a result of its perception as to what it was mandated to do by this Court as discussed in *Connor* v. *Johnson,* 402 U.S. 690; *Connor* v. *Williams,* 404 U.S. 549; *Connor* v. *Waller,* 421 U.S. 656; and *Connor* v. *Coleman,* 425 U.S. 675. It is important to note that since the 1971 court-ordered plan, none of the court-ordered plans nor any of the legislative enacted plans have been found to be unconstitutional. The 1975 legislative reapportionment Acts were objected to by the Attorney General one day after the State had submitted the Acts, not because he had found them unconstitutional, but because "Mississippi had failed to show that [the Acts] did not have the purpose and would not have the effect of denying or abridging the right to vote on account of race" (Jurisd. State. 76-934, 8).

The court-ordered and legislative reapportionment plans since 1971 have been based on the United States Census of 1970.[19] According to the Census of 1970, Mississippi has a population of 2,216,912. *Connor* v. *Johnson, supra,* 330 F.Supp. at 508. As there are 52 senate seats, the "norm" (absolute equivalent) for each seat is 42,633 people. For the 122 house seats the "norm" is 18,171 people. Thus, a variance of 1 percent in the population norm for the election of a senator amounts to only 426 persons, while a similar variance for the election of a representative amounts to only 181 persons.

---

[19] Although the U.S. Census Bureau made official population estimates for 1973, those figures were found to be unusable since they did not include beats or voting precincts (App. Vol. III, 101, 102). In Mississippi, each county is divided into five beats, also known as supervisor districts, which are the units of county government.

1. The 1971 Court-Ordered Plan.

The 1971 court-ordered plan created thirty-three senate districts and forty-six house districts. *Connor* v. *Johnson,* 330 F.Supp. at 509-518. Under the plan no county or beat was fractionalized, although counties were combined to form a single district. Nineteen of the thirty-three senate districts were single-member districts. Of the remaining fourteen multi-member districts, eleven districts elected two senators, two districts elected three senators, and one district elected five senators. District 29 had the largest under-representation, with a variance of 9.6 percent. *Id.* at 511. District 19 had the greatest over-representation, with a variance of 9.3 percent. *Id.* at 510. Thus, the total maximum variance for senate districts was 18.9 percent.

The forty-six house districts were as follows: thirteen were single-member; fifteen districts elected two representatives;[20] eight districts elected three representatives;[21] five districts elected four representatives;[22] two districts elected five representatives;[23] one district elected six representatives; one district elected

---

[20] Districts 8, 9, 26, 32 and 43 had residency requirements which required a representative to reside in a specific county. *Connor* v. *Johnson, supra,* 330 F.Supp. at 517, 520.

[21] Districts 1, 25 and 35 were floterial districts. *Connor* v. *Johnson, supra,* 330 F.Supp. at 516-518. In floterial districts some representatives are elected by smaller sub-districts and the remaining representatives are elected from the district at-large.

[22] Districts 11, 24 and 28 were floterial districts, with District 24 having an additional residency requirement for one seat. *Connor* v. *Johnson, supra,* 330 F.Supp. at 516-518.

[23] Both of these districts, 4 and 23, were floterial districts, with District 23 having a residency requirement for one seat. *Connor* v. *Johnson, supra,* 330 F.Supp. at 516-517, 520.

seven representatives; and one district elected twelve representatives.

The three largest counties in Mississippi—Hinds, Harrison and Jackson—comprise one-fifth of the State's population. Under the 1971 plan Hinds County elected five senators and twelve representatives at-large; Harrison County elected three senators and seven representatives at-large; and Jackson County elected two senators and six representatives[24] at-large. The district court in its opinion stated that its reapportionment plan was final as to all counties. *Connor* v. *Johnson, supra,* 330 F.Supp. at 519.

In granting plaintiffs' motion to stay the filing deadline in Hinds County for candidacy in the 1971 elections, this Court stated:

> [W]hen district courts are forced to fashion apportionment plans, single-member districts are preferable to large multi-member districts as a general matter . . . The District Court is instructed, absent insurmountable difficulties, to devise and put into effect a single-member district plan for Hinds County by [June 14, 1971]. . . . *Connor* v. *Johnson, supra,* 402 U.S. at 692.

The district court found "insurmountable difficulties," *Connor* v. *Johnson, supra,* 330 F.Supp. at 523, and accordingly the 1971 elections were held pursuant to its original plan.

---

[24] George County was combined with Jackson County in electing representatives. *Connor* v. *Johnson, supra,* 330 F. Supp. at 516.

2. The 1973 Legislative Plan.

On February 9, 1973, the Governor approved H.B. 446 and S.B. 1701, Miss. Legis., 1973 Reg. Sess., which reapportioned the State House of Representatives and Senate districts (App. Vol. I, 15). The plans conformed in all respects with the district court's 1971 plan, except for the representative districts for Hinds, Harrison, Jackson and George Counties, and the senatorial district for Hinds County (Supp. App. 1a-2a).

Hinds County was apportioned so that each beat would elect two representatives (for a total of ten representatives) and two representatives were to be elected from the County at-large. The five senators from Hinds County were to be elected at-large, but it was required that one senator reside in each of the five beats. Each of the beats in Harrison County would elect a representative, and an additional two representatives were to be elected from the County at-large. Each of the beats in Jackson County would elect a representative, with a sixth representative to be elected at-large from Jackson and George Counties. The sixth representative was required to be a resident of George County.

On February 21, 1973, this Court decided *Mahan* v. *Howell, supra,* 410 U.S. 315, which upheld a Virginia reapportionment statute that utilized multi-member districts to maintain political boundaries. Believing that under *Mahan* v. *Howell,* H.B. 446 and S.B. 1701 had gone further than was required by law (Supp. App. 14a), the Mississippi legislature enacted new reapportionment legislation superseding its previous legislation. H.B. 1389 and S.B. 2452, Miss. Legis., 1973 Reg. Sess., approved by the Governor on April 6, 1973, essentially readopted the plan initially formulated by

the district court in 1971. The only difference was that the representatives elected from Hinds, Harrison, Jackson and George Counties were to run in designated posts, and the senators elected from Hinds County were to run in designated posts (Supp. App. 3a-4a).

3. The 1975 Legislative Plan.

In 1975 the Mississippi Legislature once again undertook the task of reapportioning by enacting H.B. 1290 and S.B. 2976, Miss. Legis., 1975 Reg. Sess. These bills were approved by the Governor on April 7 and 8, 1975. Prior to enactment of S.B. 2976, a report of the Senate Committee on Elections entitled "Legislative History and Statement of Intent" was adopted by the Senate. *Connor* v. *Waller, supra,* 396 F.Supp. at 1315. That report discussed the Committee's policies in apportioning the Senate legislative districts and its consideration of alternative apportionment proposals (Supp. App. 15a).

The Committee determined that "the policy of maintaining the integrity of county lines in establishing legislative districts should be continued" (Supp. App. 15a). The Committee recognized its inability to attain mathematical exactness in apportioning and still maintain the integrity of political subdivision lines. Nevertheless, it sought to create legislative districts as nearly as equal as practicable (Supp. App. 18a). Moreover, the Committee stated its attempt to reduce multi-member districts as much as possible, yet still give effect to the one person-one vote requirement of the Constitution (Supp. App. 16a).

Mayor Charles Evers of Fayette, Mississippi, testified before the Committee and submitted a plan for re-

apportionment (Supp. App. 18a). Mayor Evers concurred with the policy of preserving the integrity of county lines (Supp. App. 16a), but his plan contained large population variances among the districts including a total maximum variance of 47 percent (Supp. App. 19a). The Committee felt that in view of this Court's decisions, Mayor Evers' plan was unconstitutional, and therefore rejected it (Supp. App. 19a).

The Committee also considered a proposal for reapportionment presented by the plaintiffs to the district court (Supp. App. 19a). While admittedly achieving a "greater mathematical exactness" than did the Committee's plan, the Committee concluded that plaintiffs' proposal was "impracticable and unworkable" (Supp. App. 19). Forty of the fifty-two districts in plaintiffs' proposal crossed county lines, and forty-six of the new districts crossed beat lines. Only four districts in plaintiffs' plan were "composed of counties which are not divided or [were] composed of a subdivision of a county" (Supp. App. 19a-20a).

Plaintiffs' proposal utilized census enumeration districts as the basic unit for determining the population of a legislative district (Supp. App. 20a). Use of enumeration districts would require the establishment of new voting precincts along the enumeration district lines, a power traditionally that of the local government (*Id.*). The plaintiffs' plan was ultimately rejected by the Committee because:

> [T]he committee did not want to abrogate the historical state policy of creating Senate districts coinciding with county lines, because the committee did not want to abridge the traditional power of local government to establish voting precincts and because the committee did not want to create

unnecessary confusion and impose an unwarranted hardship upon voters and election officials by structuring voting precincts on enumeration districts which are subject to frequent change (Supp. App. 20a-21a).

The House Committee on Apportionment and Elections issued a report to accompany H.R. 1290 (Supp. App. 23a). That report stated policy considerations similar to those of the Senate Committee's policy considerations.

Both the Senate and the House bills retained the same legislative apportionment as the district court's 1971 plan, with the exception of Hinds, Harrison and Jackson Counties, and George County with regard to the House plan. The Senate plan provided that five, three and two senators would be elected at-large from Hinds, Harrison and Jackson Counties, respectively. The variances from the population norm for each of these counties were: +0.84 percent for Hinds County; +5.2 percent for Harrison County; +3.2 percent for Jackson County (Supp. App. 22a).

The House plan provided for Hinds County that two representatives were to be elected from each of the five beats in the County and two representatives were to be elected by the County at-large (Supp. App. 34a). The maximum population variance in Hinds County under this plan was 1.04 percent. *Connor* v. *Waller, supra,* 396 F.Supp. at 1317. Regarding Harrison and Jackson Counties, the House Committee determined that the devastating effect of Hurricane Camille in August, 1969, resulted in a temporary shift of population within the Counties. As a result, the committee concluded that the 1970 census did not accurately reflect the

population of the individual beats in the County (Supp. App. 35a-36a). Accordingly, Harrison County was to elect seven representatives at-large with the requirement that one representative reside in each of the five beats. Jackson and George Counties were to elect six representatives at-large, with the requirement that one representative was to reside in each of the five beats in Jackson County and one representative was to reside in George County.

For the first time in this litigation epic, racial dilution became a central issue (Supp. App. 75a). The decisions prior to *Connor* v. *Waller, supra,* 396 F.Supp. 1308, had dealt exclusively with the issue of one person-one vote. Under the 1975 legislative reapportionment plan, eight senatorial districts electing twelve senators had a black population majority. Six senatorial districts electing thirteen senators had between 36-50 percent black population. In the House plan, ten districts electing twenty-six representatives had a black population majority, whereas sixteen districts electing forty-six representatives had between 36-50 percent black population. *Id.* at 1326.

After holding a hearing and receiving briefs, the district court held, with the exception of the House plan for Harrison County, that the 1975 legislative reapportionment Acts were not violative of the one person-one vote rule, nor did the Acts unconstitutionaly minimize or cancel out black voting strength. *Connor* v. *Waller, supra,* 396 F.Supp. at 1309. The district court retained jurisdiction over Harrison County pending division in that County of new beats in another case. *Id.* at 1317-1318.

4. The 1975 Court-Ordered Plan.

This Court reversed the district court, holding that the legislative enactments were required to be submitted pursuant to § 5 of the Voting Rights Act. *Connor* v. *Waller,* 421 U.S. 656. The reversal was without prejudice to the district court's authority to require, if appropriate, the holding of the 1975 legislative elections pursuant to a court-ordered plan. *Id.* at 656. The district court, thereafter, by orders dated June 25, July 8 and July 11, 1975 formulated a temporary reapportionment plan for the 1975 elections (App. Vol. II, 178, 183, 207).

In formulating the temporary plan, the district court recited the necessity of utilizing the beat as the smallest identifiable unit in apportioning (App. Vol. II, 194). Since the 1970 census figures were based on enumeration districts, rather than voting precincts as had been the previous practice of the Census Bureau, voting precincts could not be used in formulating an apportionment plan (App. Vol. II, 193).

Reapportionment plans offered by the plaintiffs and intervenor could not be used by the district court because they did not conform to the requirements of Mississippi registration and voting procedures (App. Vol. II, 211). The district court further noted as to plaintiffs' and intervenor's reapportionment plans:

> [T]o a large extent we must say in kindly candor that the objective of these plans, quite clearly, is to *maximize* black voting strength wherever it may be found. These *plans* would fragment the eighty-two counties into several hundreds of small pieces, tacked together in a fashion designed, wherever possible, to establish election districts with black

> majorities (App. Vol. II, 211, emphasis in original).

The district court's reapportionment plan under which the 1975 elections were held contained for the Senate: twenty-seven single-member districts;[25] eleven multi-member districts electing two senators; and one multi-member district electing three senators (App. Vol. II, 227-229). The House districts were apportioned in the following manner: fifty-six single-member districts;[26] twenty-one multi-member districts electing two representatives;[27] four multi-member districts electing three representatives, and three multi-member districts electing four representatives [28] (App. Vol. II, 230-236). In the Senate plan, Hinds County elected five senators from single-member districts, Harrison County elected three senators at-large, and Jackson County elected two senators at-large. In the House plan, Hinds County elected twelve representatives from single-member districts, Harrison County elected five representatives from single-member districts and two representatives at-large, and Jackson County elected five representatives from single-member districts. For the first time in Mississippi history county boundaries were fragmented—Rankin, Madison, Greene and Stone Counties (App. Vol. II, 232-236).

Pursuant to the 1975 court-ordered plan, fourteen senators and thirty representatives were elected from

---

[25] District 27B was a floterial district.

[26] Districts 1B, 3B, 11B, 25B and 35B were floterial districts.

[27] Districts 2, 8, 9, 23A, 26, 27, 29 and 32 had residency requirements.

[28] District 24 had a residency requirement.

districts having a black population majority. In addition, thirteen senators and forty-six representatives were elected from districts having a black population of 36-50 percent (App. Vol. II, 226).

5. The 1976 Court-Ordered Plan.

On June 15, 1976, the district court held a hearing to formulate a permanent reapportionment plan to be used for the 1979 elections. That plan was formulated by the district court in a series of orders issued on August 24, 1976 (App. Vol. III, 94), September 8, 1976 (App. Vol. III, 117), November 18, 1976 (App. Vol. III, 232), and December 21, 1976 (App. Vol. III, 279).

That plan contains only single-member districts, and no multi-member districts. As a result, nineteen counties and at least seven beats are fractionalized in the apportionment of the Senate districts, and forty-two counties and at least forty-one beats are fractionalized in the apportionment of the House districts. Hinds, Harrison and Jackson Counties are not fractionalized, but rather subdivided to attain the appropriate number of legislative districts (App. Vol. III, 235-236, 242-243, 246-247). The total maximum variance for the Senate districts is 16.5 percent, while the total maximum variance for the House districts is 19.3 percent.

SUMMARY OF ARGUMENT

Until the recent court-ordered reapportionment plans, the county boundaries in Mississippi had never been fractionalized in legislative districting. Multi-member districts have been a traditional state policy and have been used to preserve the integrity of county boundaries.

The district court acknowledged that the integrity of county boundaries could be maintained by the use of multi-member districts and still comply with the one person-one vote principle. It further found that a reapportionment plan that utilized only single-member districts would require the fractionalization of county boundaries. However, the district court felt compelled by decisions of this Court to fashion a reapportionment plan utilizing single-member districts exclusively. Defendants contend that the district court was clearly in error in abandoning the use of multi-member districts, thus necessitating the fractionalization of county boundaries.

This Court has expressed disapproval of the use of multi-member districts in court-ordered plans where *large* multi-member districts were created; where the court *imposed* multi-member districts on states that previously did not use multi-member districts; and where multi-member districts had the purpose or effect of minimizing or cancelling the voting strength of racial or political elements.

The district court could have, and has in the past, fashioned a reapportionment plan in Mississippi that utilized small multi-member districts and single-member districts. Moreover, the district court has imposed a single-member district plan on a state that has a rational policy for utilizing multi-member districts. Finally, it has never been demonstrated that multi-member districts in Mississippi operate to minimize or cancel the voting strength of any racial or political element.

The district court, when fashioning the reapportionment plan for the 1975 elections, stated that when the

permanent plan for the 1979 elections was formulated, special elections would be held in "those legislative districts where required by law, equity, or the Constitution" (App. Vol. II, 180).

After formulating the permanent plan, the district court held that the 1975 elections comported with all pertinent constitutional standards. However, the district court held that special elections were required in two districts where the permanent plan had resulted in a change of black/white population ratio. In reaching this conclusion, the district court failed to apply the constitutional test of racial dilution. Instead, it applied the Section 5, Voting Rights Act of 1965, test of dilution. Section 5 is not applicable in the present case. Moreover, even under Section 5 standards there is no racial dilution. Section 5 states that there is dilution where there is a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise. The facts do not show any retrogression in the position of the blacks with respect to their effective exercise of the electoral franchise in the two districts where special elections were orderd. Thus, it is improper to require any special elections in the present circumstances.

ARGUMENT

A. THE DISTRICT COURT FRAGMENTED COUNTY BOUNDARIES, CONTRARY TO STATE POLICY, BY REFUSING TO UTILIZE MULTI-MEMBER DISTRICTS IN ITS REAPPORTIONMENT PLAN.

1. As the County Is the Basic Unit of Government in Mississippi, the State Has Always Preserved the Integrity of County Boundaries.

Since the admission of Mississippi into the Union in 1817, the County has been "the sole, inviolate basic unit of state and local government" (App. Vol. II, 187). "All state law in Mississippi—criminal, civil, and administrative—has uniformly rested on that foundation" (Supp. App. 95a-96a). Each county is divided into five supervisors districts, Miss. Const., Sec. 170, also known as beats. The supervisors elected from each of the beats comprise the county governing board.[29] The county governing board exercises executive and judicial functions, including the valuation of property for taxation, the levy of taxes, the expenditure of public funds, the issuance of bonds, and the management of public roads (App. Vol. III, 97).

Section 89 of the Mississippi Constitution providing for local and private legislation, is often used to aid the counties and their subdivisions (App. Vol. II, 189). As the district court has recognized, when a county is fragmented—for example, a beat is taken from one

[29] Since the Mississippi Constitution requires the supervisors to be elected from their respective beats Miss. Const., Sec. 176, a voting precinct must be located entirely within the same beat. Mississippi has maintained for the past seventy-five years a system of permanent voter registration. Once a person registers to vote within the precinct of his residence, he need never register again—except in the rare event of a total re-registration—as long as he continues to reside within the precinct (App. Vol. III, 97).

county and arbitrarily annexed to another county—so as to attain a desired population, the "balkanized" beat may well be deprived of effective representation. *Connor* v. *Johnson, supra,* 330 F.Supp. at 518. A voter from the balkanized area "would *appear* to be voting on an equality, and mathematically this would be so, but his chance of influencing the outcome desired by the great majority living in the adjoining county would be ephemeral." *Id.* (emphasis in original).

As the plaintiffs have conceded (Supp. App. 41a), prior to the district court-ordered plan of 1975, there had never been an instance in the history of Mississippi where a county boundary was fractionalized so as to create a legislative district. Equally important is the history in Mississippi of the use of multi-member and multi-county legislative districts.

The "use of multiple member and multiple county legislative districts in Mississippi does not have its origin in a desire to cancel out or minimize black voting strength." *Connor* v. *Waller, supra,* 396 F.Supp. at 1323. Multi-member districts have been common in Mississippi since before the Civil War. Prior to statehood when Congress passed an act to elect delegates to the Mississippi Constitutional Convention, each of the counties elected a multiple number of delegates (App. Vol. II, 187).

The Mississippi Legislative Apportionment Act of May 12, 1837, created twenty-four multi-member districts for the election of representatives, electing two to four members per district (App. Vol. II, 187). By 1846, the State had twenty-two multi-member districts electing two to four representatives each. Eighteen of the Senate districts were composed of the combination

of two to four counties. Hutchinson's Mississippi Code of 1848, pp. 377-378.

The Mississippi Constitutional Convention of 1868 apportioned legislative districts so that twenty-nine counties elected at-large between two to five representatives. Twenty-three of the twenty-nine Senate districts were comprised of two to six counties. Article XI, Mississippi Constitution of 1869, Revised Code of 1871, p. 665. Under the Mississippi Constitution of 1890, multi-member districts were included for both the House and the Senate. Miss. Const. §§ 254, 255. Legislative reapportionment under the Constitution of 1890 remained in effect until 1963 when the Mississippi Constitution was amended in the wake of *Baker* v. *Carr,* 369 U.S. 186 (1962) (App. Vol. II, 188).

In sum, the county has occupied the central role in Mississippi government throughout the State's history. Accordingly, the integrity of the county boundaries has been preserved, often through the utilization of multi-member districts. In its most recent attempt to devise a reapportionment plan, the Mississippi legislature reaffirmed its desire to maintain the integrity of the county unit (Supp. App. 15a, 23a).

2. The District Court Erred In Refusing To Utilize Multi-Member Districts In Its Reapportionment Plan, And Thus Fragmenting Political Boundaries.

In formulating a permanent reapportionment plan the district court felt compelled to disregard the State's long-standing policy of utilizing multi-member districts to preserve the integrity of political boundaries. Believing that a court-ordered reapportionment plan utilizing multi-member districts would not withstand judicial review, the district court "decided

to divide the State into single-member legislative districts in the hope that this long-running controversy may at last be terminated and the stability of the Mississippi Legislature restored" (App. Vol. III, 98).

This Court's admonishments to lower courts concerning use of multi-member districts has been limited to circumstances where they were used in the absence of any state policy; where they had the purpose or effect of minimizing or canceling out the voting strength of racial or political elements of the voting population; or where large multi-member districts existed. Mississippi has an undisputed long-standing policy of utilizing multi-member districts and it has never been shown that the policy has either the purpose or the effect of minimizing or canceling out the voting strength of racial or political elements. By refusing to utilize multi-member districts, the district court was required to fractionalize county boundaries. This Court has never held Mississippi's use of multi-member districts to be unconstitutional, nor has it ever held that a court-ordered plan could not utilize multi-member districts.

In *Connor* v. *Johnson*, 402 U.S. 690, this Court first addressed the use in Mississippi of multi-member districts. Plaintiffs applied to this Court for a stay of a district court-ordered plan that established Hinds County as a multi-member district electing five senators and twelve representatives at-large. The district court had expressed reluctance over the use of multi-member districts in counties electing four or more senators or representatives, stating that it would be "ideal" if such counties could be divided; but, the district court found it "a matter of sheer impossibility"

to divide such counties into single-member districts in time for the 1971 elections.[30] *Connor* v. *Johnson, supra,* 330 F.Supp. at 519. In granting a stay of the district court plan for Hinds County, this Court stated: "When district courts are forced to fashion apportionment plans, single-member districts are preferable to *large* multi-member districts as a general matter." *Connor* v. *Johnson, supra,* 402 U.S. at 692 (emphasis supplied).

In its order formulating the 1971 reapportionment plan, the district court stated that the plan was temporary as to Hinds, Harrison and Jackson Counties, but *"as to all other Counties* [*was*] *final."* *Connor* v. *Johnson, supra,* 330 F.Supp at 519 (emphasis in original). After the 1971 elections, plaintiffs appealed to this Court challenging the constitutionality of the district court plan. *Connor* v. *Williams,* 404 U.S. 549. This Court found it inappropriate to determine the constitutionality of the plan at that time,

> [b]ecause the District Court had retained jurisdiction over plans for *Hinds, Harrison and Jackson Counties* and had stated its intention to appoint a Special Master in January 1972 to consider the subdivision of *those counties* into single-member districts. . . . *Connor* v. *Coleman,* 425 U.S. 675, 676 (emphasis supplied).

* * *

[30] Only two other districts besides Hinds County in the court plan elected four or more representatives. Harrison County elected seven representatives and Jackson County elected six representatives. No other district elected four or more senators. The court's plan contained 30 other multi-member house districts and 13 other multi-member senate districts. *Supra* at 22. The "ideal" was attained for Hinds, Harrison and Jackson Counties in the 1975 court-ordered plan by subdividing each of those Counties into single-member districts.

> Such proceedings should go forward and be promptly concluded, for, as this Court has emphasized, 'when District Courts are forced to fashion apportionment plans, single-member districts are preferable to large, multi-member districts as a general matter. . . . *Connor* v. *Williams, supra,* 404 U.S. at 551.

After the district court approved the 1975 legislative apportionment plan, *Connor* v. *Waller, supra,* 396 F. Supp. 1308, this Court reversed, holding the legislative enactments were required to be submitted pursuant to section 5 of the Voting Rights Act of 1965. *Connor* v. *Waller,* 421 U.S. 656. The reversal was,

> without prejudice to the authority of the District Court, if it should become appropriate, to entertain a proceeding to require the conduct of the 1965 elections pursuant to a court-ordered reapportionment plan that complies with this Court's decisions in *Mahan* v. *Howell,* 410 U.S. 315 (1973); *Connor* v. *Williams,* 404 U.S. 549 (1972); and *Chapman* v. *Meier,* 420 U.S. 1 (1975).

This Court in *Connor* v. *Coleman,* 425 U.S. 675, directed the district court to enter a final judgment embodying a permanent plan reapportioning the Mississippi Legislature. The district court correctly understood (App. Vol. III, 85) the *Connor* v. *Coleman* decision as requiring it to comply with this Court's decisions in *Mahan* v. *Howell,* 410 U.S. 315, *Connor* v. *Williams,* 404 U.S. 549, and *Chapman* v. *Meier,* 420 U.S. 1.

The *Connor* decisions[31] stand for the proposition that: "When district courts are forced to fashion ap-

[31] *Connor* v. *Johnson,* 402 U.S. 690, *Connor* v. *Williams,* 404 U.S. 549, and *Connor* v. *Waller,* 421 U.S. 656.

portionment plans, single-member districts are preferable to *large* multi-member districts as a general matter." That proposition was made in reference to the large multi-member districts contained in Hinds, Harrison and Jackson Counties. The district court in its initial decision in these proceedings expressed its displeasure with *those* multi-member districts. *Connor* v. *Johnson, supra,* 330 F.Supp. at 519.[32] As to the remaining multi-member districts, the district court held those reapportionment plans to be final. *Id.* The two decisions—*Mahan* v. *Howell* and *Chapman* v. *Meier*—cited by this Court in its *Connor* v. *Waller* opinion approved the use of multi-member districts in certain circumstances.

Chapman v. *Meier, supra,* 420 U.S. 1, presented the issue of the constitutionality of a federal court-ordered reapportionment of the North Dakota Legislature. The court plan created five multi-member senate districts electing one-third of the State senators. Reviewing North Dakota's constitutional and statutory history, this Court found two significant facts:

> The first is that some multimembership on the House side of the Legislative Assembly tradition-

[32] See also, *Mahan* v. *Howell,* 410 U.S. 315. In *Mahan,* the Virginia State Legislature had divided Fairfax County into two five-member districts. The district court had intimated that such action was evidence that the State was not strictly adhering to political subdivision lines. This Court, in rejecting the district court's reasoning stated: "While Fairfax County was divided, it was not fragmented. And had it not been divided, there would have been one ten-member district in Fairfax County, a result that this Court might well have been thought to disfavor as a result of its opinion in *Connor* v. *Johnson,* 402 U.S. 690, 692 (1971). The State can scarcely be condemned for simultaneously attempting to move toward smaller districts and to maintain the integrity of its political subdivision lines." *Mahan* v. *Howell, supra,* 410 U.S. at 327.

ally has existed. This plainly qualifies as established state policy. The second is that, in contrast, multimembership on the Senate side . . . has never existed except as impos l [by a three-judge federal court and a recent legislative act that was immediately nullified by referendum] . . . Multimember senate representation, therefore, obviously does not qualify as established state policy. *Id.* at 14-15, footnote omitted.

Noting its preference for single-member districts in court-ordered plans, *Chapman* v. *Meier, supra,* 420 U.S. at 18, this Court held that in evaluating the use of multimember districts, two standards emerged—one standard for a federal court plan, another standard for a state legislative plan:

> When the plan is court ordered, there *often is no state policy of multimember districting* which might deserve respect or deference. Indeed, if the court is *imposing* multimember districts upon a State which *always has employed single-member districts,* there is special reason to follow the [*Connor* v. *Johnson, supra,* 402 U.S. 690] rule favoring the latter type of districting.
>
> * * *
>
> Absent particularly pressing features calling for multimember districts, a United States district court should refrain from *imposing* them upon a State. *Id.* at 19 (emphasis supplied).

Since the district court had imposed multimember senatorial districts where previously none had existed, and there had been no suggestion of a legitimate state interest or policy in creating such multi-member districts, the district court was directed to *reinstate* single-member senate districts in North Dakota. *Chapman* v. *Meier, supra,* 420 U.S. at 21.

In Mississippi, multi-member districts have existed for over 150 years for both senatorial and representative districts. This plainly qualifies as established state policy. Unlike the senatorial districting in North Dakota, Mississippi has a state policy of multi-member districting which deserves respect and deference. The district court in the present case has *imposed* single-member districts upon a State which has always employed multi-member districts. Thus in Mississippi there is a special reason *not* to rely exclusively on single-member districts in fashioning a reapportionment plan.

Mahan v. *Howell, supra,* 410 U.S. 315, involved the constitutionality of statutes enacted by the Virginia General Assembly apportioning the State for the purpose of electing members to the Virginia Legislature. The statute apportioning the House provided for a combination of single-member , multimember and floterial districts that contained a maximum percentage variation from the population norm of 16.4 percent. *Id.* at 318-319. The district court concluded that the 16.4 percent variance was unconstitutional, even though the basis of the variance was the State Legislature's desire to maintain the integrity of traditional political boundaries. *Id.* at 319.

In reversing the district court on that issue, this Court held that the constitutionality of a state legislative reapportionment plan was not to be judged by the more stringent standards applicable to congressional reapportionment. *Mahan* v. *Howell, supra,* 410 U.S. at 324. Reaffirming its holding in *Reynolds* v. *Sims,* 377 U.S. 533 (1964), this Court articulated the standard for state legislative reapportionment:

> '[T]he Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable' . . . We likewise reaffirm its conclusion that '[s]o long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal-population principle are constitutionally permissible. . . .' *Mahan* v. *Howell, supra,* 410 U.S. at 324-325.
>
> * * *
>
> The policy of maintaining the integrity of political subdivision lines in the process of reapportioning a state legislature, the policy consistently advanced by Virginia as a justification for disparities in population among districts that elect members to the House of Delegates, is a rational one. *Id.* at 329.

For over 150 years, Mississippi has consistently maintained its policy of preserving the integrity of county boundaries. This policy as recognized in *Mahan* v. *Howell* is a rational one. The district court recognized that "[b]y the use of *multiple member districts,* without fracturing county boundaries, the Mississippi Legislature could be apportioned in a manner which would comply with one man-one vote principles" (App. Vol. III, 98, emphasis in original). There is no language in *Connor* v. *Williams,* 404 U.S. 549, *Chapman* v. *Meier,* 420 U.S. 1, or *Mahan* v. *Howell,* 410 U.S. 315, that suggests a court-ordered plan *must use* single-member districts exclusively and ignore a rational state policy.[33]

[33] Intervenor makes the argument that the district court was required to use only single-member districts in fashioning its plan. *See* Mr. Johnson, Attorney for Intervenor, June 15, 1976 hearing, Supp. App. 101a. The intervenor [The United States Attorney General] believes multi-member districts are per se unconstitutional (Supp. App. 100a). Thus, *any* State enacted legislative reapportionment plan that contains multi-member districts would be disapproved by the Attorney General. The intervenor's insistence for a reapportionment plan devoid of multi-member districts requires abandonment of a long-standing rational state policy.

The Court upheld in *Mahan* v. *Howell* a district court order that created a multi-member district. 410 U.S. at 333. In *Mahan,* the State argued that the district court had imposed a multi-member district contrary to the State legislative policy favoring single-member districts. *Id.* at 331. In the present case, the district court *refused* to use multi-member districts even though there is a State policy of using multi-member districts to avoid fracturing of county boundaries.

It is well established that multi-member districts are not *per se* unconstitutional. *Chapman* v. *Meier, supra,* 420 U.S. at 15; *White* v. *Regester,* 412 U.S. 755, 765 (1973); *Mahan* v. *Howell, supra,* 410 U.S. at 332-333; *Whitcomb* v. *Chavis,* 403 U.S. 124, 142 (1971); *Burns* v. *Richardson,* 384 U.S. 73 (1966); *Fortson* v. *Dorsey,* 379 U.S. 433 (1965). This Court on a number of occasions approved reapportionment plans that included multi-member districts.[34] *Dallas Cty, Ala.* v. *Reese,* 421 U.S. 477 (1975); *Chapman* v. *Meier, supra; Mahan* v. *Howell, supra; Abate* v. *Mundt,* 403 U.S. 182 (1971); *Whitcomb* v. *Chavis, supra; Burns* v. *Richardson, supra; Fortson* v. *Dorsey, supra.*

In *Whitcomb* v. *Chavis,* 403 U.S. 124, this Court reversed a three-judge district court which had found

[34] In *Whitcomb, supra,* 403 U.S. at 157, fn. 37, it was noted that as of 1970, 46 percent of the upper houses and 62 percent of the lower houses in the States contained some multi-member districts.

unconstitutional the legislative district for Marion County, Indiana. Marion County was a multi-member district electing eight senators and fifteen representatives. Plaintiffs, black voters in Marion County, challenged the multi-member district as invidiously diluting the force and effect of their vote. The district court in fashioning a reapportionment plan created single-member districts in Marion County. In drawing district lines, judicial notice was taken of the location of the nonwhite population in the State. The court's plan was expressly aimed at creating legislative districts so as to give recognition to black voters in the State. *Id.* at 139.

In reversing the district court, this Court held that the question of the constitutional validity of multimember districts has focused on the quality of representation afforded by the multi-member district as compared with single-member districts. *Whitcomb* v. *Chavis, supra,* 403 U.S. at 142. Multi-member districts may be subject to challenge where they are designed or "operate to minimize or cancel out the voting strength of racial or political elements of the voting population." [35] Id. at 143. Accord, *Fortson* v. *Dorsey, supra,* 379 U.S. at 439; *Burns* v. *Richardson, supra,* 384 U.S. 88. But this Court insisted that it was not enough merely to allege this invidious discrimination, the challenger carries "the burden of proving that multi-member districts unconstitutionally operate to dilute or cancel the voting strength of racial or political elements." *Whitcomb* v. *Chavis, supra,* 403 U.S. at 144.

Examining the record, this Court found no evidence of invidious discrimination:

[35] *See, e.g., White* v. *Regester,* 412 U.S. 755 where this Court upheld an invalidation of multi-member districts. The lower court had found that the districts were designed and operated so as to exclude Mexican-Americans from effective participation in political life.

> We have discovered nothing in the record or in the court's findings indicating that poor Negroes were not allowed to register or vote, to choose the political party they desired to support, to participate in its affairs or to be equally represented on those occasions when legislative candidates were chosen. Nor did the evidence purport to show or the court find that inhabitants of the ghetto were regularly excluded from the states of both major parties, thus denying them the chance of occupying legislative seats. *Whitcomb* v. *Chavis, supra,* 403 U.S. at 149-150.

Similarly, the voluminous record in this case is noticeably lacking of evidence of invidious discrimination. As discussed above, multi-member districts have been common in Mississippi for over 150 years. Thus, multi-member districts do not have as their purpose an attempt to minimize or cancel plaintiffs' voting strength.

Dr. Gordon G. Henderson testifying on behalf of plaintiffs, admitted that he knew of no blacks in Mississippi having any difficulty in voting within the last five years (Hearing of May 7, 1965, App. Vol. II, 73); nor did he know of instances where race prevented an individual from qualifying as a candidate for a desired office, participating in the candidate election process or any other portion of the political process (*Id.*, App. Vol. II, 73-74).

Reverend Rims Barber, Associate Director of the Delta Ministry, an organization "to assist persons and groups of people who are oppressed by poverty or by discrimination in the State of Mississippi" (Hearing of May 7, 1975, App. Vol. II, 81-82), also testified on behalf of plaintiffs. Reverend Barber testified that

"technical bars to political participation are 99 percent down" (*Id.*, App. Vol. II, 100), and like Dr. Henderson, he had not observed in the last five to six years anybody denied the right to register on account of race (*Id.*, App. Vol. II, 107).

One of the plaintiffs, Mr. Henry J. Kirksey, a black citizen and candidate for State senator from Hinds County in the 1971 election, also testified at the May 7, 1975 hearing (Hearing of May 7, 1975, App. Vol. II, 114). Mr. Kirksey testified that he had voted in nearly every election in Hinds County since 1961 and had encountered no problems in participating in the political process (*Id.*, App. Vol. II, 124-125).

Plaintiffs have failed to carry their burden of proof, *White* v. *Regester, supra,* 412 U.S. at 766, and demonstrate that multi-member districts as utilized in Mississippi constitute invidious discrimination.

> Speculations do not supply evidence that the multi-member districting was designed to have or had the invidious effect necessary to a judgment of the constitutionality of the districting. *Burns* v. *Richardson, supra,* 384 U.S. at 88-89.

The evidence is devoid of a showing that multi-member districts operate to minimize or cancel plaintiffs' votes. The district court has never made such a finding. Having failed to find that multi-member districts invidiously discriminate, the district court erred in refusing to utilize multi-member districts in the reapportionment plan.

> The remedial powers of an equity court must be adequate to the task, but they are not unlimited. Here the District Court erred in so broadly brushing aside state apportionment policy without solid

> constitutional or equitable grounds for doing so. *Whitcomb* v. *Chavis, supra,* 403 U.S. at 161.

In the present case, the district court resorted to the exclusive use of single-member districts "in the hope that this long-running controversy may at last be terminated" (App. Vol. III, 98). By utilizing single-member districts exclusively in its plan, the court was forced to abandon the State policy of preserving the integrity of political boundaries. However admirable the desire to terminate this long-running controversy may be, it is not sufficient to justify the "brushing aside" of Mississippi's long-standing policy.

B. WITHOUT FINDING ANY CONSTITUTIONAL INFIRMITIES IN THE REAPPORTIONMENT PLAN PURSUANT TO WHICH THE 1975 ELECTIONS WERE HELD, THE DISTRICT COURT SHOULD NOT HAVE ORDERED SPECIAL ELECTIONS

The District Court held that the 1975 court-ordered reapportionment plan, pursuant to which the 1975 legislative elections were held, "comported with all pertinent Constitutional standards" (App. Vol. III, 223). Nevertheless, the district court believed that it was required to replace the 1975 plan with a reapportionment plan that contained only single-member districts (App. Vol. III, 98).

Special elections should not be ordered by the district court until it makes the finding that its new reapportionment plan remedies a previously defective district. That district must be found to have unconstitutionally diluted the voting strength of a racial or political group. Any other basis for special elections would result in the continual disruption of state legis-

latures whenever a new reapportionment plan is formulated that merely improves upon prior plans.

This Court held in *White* v. *Regester,* 412 U.S. 755, that to sustain a claim of racial dilution, "it is not enough that the racial group allegedly discriminated against has not had legislative seats in proportion to its voting potential. The plaintiffs' burden is to produce evidence to support findings that the political processes leading to nomination and election were not equally open to participation by the group in question —that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice." *Id.* at 765-766.

The district court found that plaintiff had failed to demonstrate any present impact from past discrimination: that plaintiffs had failed to show legislative unresponsiveness to the needs of black citizens (App. Vol. III, 225); and that " 'The Voting Rights Act of 1965 has effectively reduced all such racially discriminating factors to what honestly may be termed an irreducible minimum' " (App. Vol. III, 226). In short, as discussed in our previous section, the record fails to support plaintiffs' claims of racial dilution.[36]

Although it failed to find any unconstitutional racial dilution, the district court nevertheless ordered special

[36] In *Connor* v. *Waller, supra,* 396 F. Supp. 1308, the district court held that the plaintiffs' failed to demonstrate that their voting strength had been unconstitutionally diluted. After this Court reversed on other grounds, 421 U.S. 656, the district court at a hearing held on June 20, 1975 offered all parties the opportunity to produce additional evidence to prove racial dilution. All parties elected to stand on the record (Hearing of June 20, 1975, Supp. App. 77a-78a).

elections in two newly created districts, House Districts 79 and 97 (App. Vol. III, 227, 228).

House District 79 was created out of a 1975 court-fashioned multimember district[37] with 65.5 percent white population majority, and under the 1979 permanent plan it has a black population majority of 56.1 percent (App. Vol. III, 227). House District 97 was created out of a 1975 court-fashioned multimember district with a 54.2 percent white majority,[38] and under the 1979 permanent plan it has a black majority of 60.6 percent. Other than citing these statistics, no other reason was given for ordering special elections.

Since the district court did not find that the 1975 plan unconstitutionally diluted the black voting strength the court could not have used the constitutional standards of dilution to determine in which districts special elections would be held.

In determining in which districts special elections would be held the district court stated,

[37] House District 79 was created out of House District 24, a multi-member district electing 4 representatives at-large from Lauderdale and Kemper Counties. Kemper County has a black population percentage of 54.8 percent. Under the 1975 court plan, one of the 4 representatives from this two-county district was required to be a resident of Kemper County.

[38] House District 97 was created out of House District 34, a three-county multi-member district electing two representatives at-large from Wilkinson, Amite and Franklin Counties. Although the district court stated in its November 12, 1976 order that under the 1975 plan District 34 had a 54.2 percent white population (App. Vol. III, 228), in its July 11, 1975 order creating District 34, the court stated that District 34 had a 53.4 percent black population (App. Vol. II, 215). Census figures reveal that the latter figure is the correct one.

> . . . that the only available thesis for ordering special elections in any of the newly formulated legislative districts would be where required to remedy any impermissible dilution of black voting strength in the temporary plan when compared with the permanent plan established for the 1979 elections (App. Vol. III, 224).

Thus, the district court examined districts not under the constitutional standard of dilution, but rather under the standard of dilution applicable to cases cognizable under Section 5 of the Voting Rights Act of 1965, *as amended*, 42 U.S.C. § 1973c.

Section 5 requires a comparison of the actual voting strength potential under the election arrangement sought to be approved with the actual voting strength potential of the previous election arrangement. This Court held in *Beer* v. *United States*, 425 U.S. 130 (1976), that:

> [T]he purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a *retrogression* in the position of racial minorities with respect to their effective exercise of the electoral franchise. *Id.* at 141 (emphasis supplied).

Apparently applying the Section 5 rationale in an inverted fashion, the district court compared the black population percentages in its 1975 temporary plan with the corresponding black population percentages in the permanent plan. In two districts where it found an increase in black population percentages, the district court ordered special elections.

This is not a Section 5 case. The question whether there was racial dilution under the 1975 Court plan

cannot be determined by *comparing* black population percentages under that plan with those found in either the permanent plan or any other plan. The constitutional standard must be applied to determine whether racial dilution existed under the 1975 Court plan.

As enunciated in *Fortson* v. *Dorsey*, 379 U.S. 433, *Burns* v. *Richardson*, 384 U.S. 73, *Whitcomb* v. *Chavis*, 403 U.S. 124 and *White* v. *Regester*, 412 U.S. 755 the constitutional standard applicable to the determination of whether a redistricting or reapportion plan impermissibly dilutes, minimizes or cancels out the voting strength of indentifiable racial or ethnic minorities is whether such groups have equal access and opportunity to fully participate in the political processes. As discussed earlier in this brief, plaintiffs have failed to carry their burden of proof and demonstrate that their voting strength has been minimized or cancelled.

In addition to the absence of evidence to support a finding of unconstitutional dilution, plaintiffs have similarly failed to demonstrate purposeful racial discrimination. Where official action is challenged, "proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause." *Village of Arlington Heights* v. *Metropolitan Housing Development Corporation*, 45 U.S.L.W. 4073 (U.S. Jan. 11, 1977).

Last term, this Court in *Washington* v. *Davis*, 426 U.S. 229 (1976), made it clear that official action will not be held to unconstitutionally violate the Fourteenth Amendment Equal Protection Clause without demonstrating a racially discriminatory purpose or intent. In the context of election apportioning, this Court

discussed *Wright* v. *Rockefeller*, 376 U.S. 52 (1964) where it had,

> . . . . upheld a New York congressional apportionment statute against claims that district lines had been racially gerrymandered. The challenged districts were made up predominantly of whites or of minority races, and their boundaries were irregularly drawn. The challengers did not prevail because they failed to prove that the New York legislature 'was either motivated by racial considerations or in fact drew the districts on racial lines'; the plaintiffs had not shown that the statute 'was the product of a state continuance to segregate on the basis of race or place of origin'; . . . The dissenters were in agreement that the issue was whether the 'boundaries . . . were purposefully drawn on racial lines . . .' " *Washington* v. *Davis*, supra, 426 U.S. at 240.

Plaintiffs and intervenor in this action have not even attempted to demonstrate that the district court was motivated by racial considerations in its formation of the 1975 court plan. As the 1975 elections were held pursuant to a constitutional plan and there has been no showing of impermissible racial dilution, the district court erred in ordering special elections.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed and remanded with instructions to formulate a reapportionment plan that preserves the integrity of the county boundaries.

Respectively submitted,

A. F. Summer
Attorney General, State of Mississippi

Giles W. Bryant
Special Assistant Attorney General

William A. Allain
Special Counsel
Post Office Box 220
Jackson, Mississippi 39205
601/354-7130

Jerris Leonard
Thomas A. Karol
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
202/872-1095

February 7, 1977